

REMARKS

Claims 1-16 were pending in this application. By this amendment, Applicants have amended Claims 1, 5, 7, 8, 9, 14, and 15 and cancelled Claims 6, 12, 13, and 16 to more particularly point out and distinctly claim the subject invention.

Priority

The Examiner maintained that Applicants cannot rely upon foreign priority papers to overcome the rejection because a translation of the papers had not been made of record in accordance with 37 C.F.R. §1.55. Applicants herewith attach a certified English language translation of the papers previously submitted.

Specification

The Examiner objected to informalities in the Abstract as filed. Applicants have amended the Abstract to overcome the informalities. Applicants respectfully request the Examiner reconsider and withdraw the objections to the Abstract.

35 U.S.C. §101 Rejection

Claims 14-16 have been rejected as directed to non-statutory subject matter. The Examiner maintains that Claims 14-16 are directed to a computer program, which is a non-statutory subject matter because it is intangible and abstract. Applicants direct the Examiner's attention to the amendments above, wherein applicants have amended "computer program" to "program, embodied on a computer readable medium." Applicants respectfully request the Examiner reconsider and withdraw the rejection under § 101.

Claim Objections

The Examiner objected to Claims 6, 9, and 15 due to informalities in the language of the claims. Applicants direct the Examiner's attention to the amendments above, wherein the claims have been amended to correct the informalities. Applicants respectfully request that the Examiner reconsider and withdraw the objections to the claims.

35 U.S.C. § 112 Rejections

Claims 1, 5, 6, 8, 9, 11, 14, and 15 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. The Examiner maintains that the claims recite "lap rate" numerous times and for the purpose of examination, the phrase "lap rate" is understood to be the "overlap rate."

Claims 1-4, 7, 9, 10, 14, and 15 have been rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner maintains that the instant claims recite the phrase "peak value on the upper limit side" and "peak value on the lower limit side" numerous times throughout said claims. The Examiner understands the phrases to mean a "maximum peak value" and a "minimum peak value."

Applicants direct the Examiner's attention the amendments above, wherein the claims have been amended to recite "overlap rate". With regard to the "peak value on the upper limit side" and "peak value on the lower limit side," Applicants respectfully direct the Examiner's attention to the attached Reference Sheet A, which is an illustration of the peak values on the upper side and the peak values on the lower side of living body signal data. The fatigue degree measurement device of the present invention utilizes a maximum Lyapunov index to determine the peak value on the upper limit side and the peak value on the lower limit side for the width fluctuation of the waveform with a

predetermined threshold value. As described, both the upper limit side and the lower limit side describe peak values. Applicants respectfully request the Examiner reconsider and withdraw the rejections.

35 U.S.C. § 103 Rejection

The Examiner rejected Claims 1-12 and 14-16 under 35 U.S.C. §103(a) as being unpatentable over Fujita et. al., U.S. Patent Publication No. 2004/236235 ("Fujita") in view of Arai et al., U.S. Patent Publication No. 2002/156392 ("Arai"). The Examiner maintains that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fujita with the absolute value treatment of Arai in order to determine the degree of fatigue.

Applicants respectfully traverse the rejection.

The Examiner noted that Claims 13 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Applicants direct the Examiner's attention to the amendments above, wherein the limitations disclosed in Claims 13 and 16 have been incorporated into the base claims. Applicants respectfully request the Examiner reconsider and withdraw the rejection under § 103(a).

In view of the comments above and the amendments to the claims, it should be clearly appreciated that the claims herein are patentable over Fujita and Arai. Accordingly, withdrawal of the rejections and allowance of the claims is believed proper.

Reconsideration and allowance of all the claims herein are respectfully requested.

Respectfully submitted,



May 28, 2008

William H. Dippert
Registration No. 26,723

Wolf Block LLP
250 Park Avenue
New York, New York 10177-0030
Telephone: 212.986.1116
Facsimile: 212.986.0604
e-Mail: wdippert@wolfblock.com